

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 37 OF 2003

State
through Public Prosecutor,
High Court of Bombay at
Panaji.

... Appellant

versus

1. Shri Rohan Adel,
s/o Vithoba Adel,
r/o H.No.15 Maad Bansai,
Bansai Kakoda, Quepem-Goa.

2. Shri Sarvesh Adel,
s/o Subhash Adel,
r/o H.No.23 Maad Bansai,
Curchorem.

3. Shri Girish Naik,
s/o Mohan Naik
r/o H.No.359,
Anandwadi Sanvordem,
Sanvordem, Sanguem, Goa.

... Respondents

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. Edwin Furtado, Advocate for the Respondents.

CORAM : P. V. HARDAS, J.

DATED : 15TH JANUARY, 2004.

ORAL JUDGMENT

The State, by this Appeal, impugns the
Judgment of the learned Judicial Magistrate First

Class, Quepem, dated 3rd January, 2002, rendered in Criminal Case No. 49/S/2001/A, acquitting the Respondents for an offence punishable under Sections 341, 323, 427, 506(ii), 109 r/w 34 of the Indian Penal Code.

2. The facts in brief as are necessary for the decision of this Appeal are stated hereunder:-

P.W.11, Prakash Gaonkar, who was attached to the Curchorem Police Station as Head Constable received a complaint lodged by P.W.1, Rama Gaonkar, on 5th March, 2001, at 4.40 p.m. After recording the complaint, P.W.1, Rama Gaonkar, was sent for medical examination and was examined by P.W.10, Dr. Megha Kudchadkar, who found multiple abrasion, linear in nature on the right side of the chest caused by hard and blunt object. The injuries were simple in nature. She also noticed an abrasion on the right upper arm caused by hard and blunt object and simple in nature. The Hurt Certificate is at Exh.26. Thereafter, the panchanama of the scene of offence was executed at Exh.PW6/A in the presence of P.W.6, Mohan Manju Fal Dessai. A laterite stone also came to be attached which was found placed in front of the front tyre on the driver's side. The Respondent Nos.1 and 2/Accused Nos.1 and 2 came to be arrested

on 23-3-2001 whereas Respondent No.3 came to be arrested on "5-1-2001", probably should read as "5-3-2001". Further to the completion of the investigation, a charge-sheet against the Respondents came to be filed.

3. The learned Judicial Magistrate First Class, Quepem, vide Exh.10 framed a charge against the Respondents for an offence punishable under Sections 341, 427, 506(ii) r/w Sections 109 and 34 of the Indian Penal Code. The Respondents/Accused denied their guilt and claimed to be tried. The prosecution in support of its case examined 11 witnesses. The learned Judicial Magistrate First Class, Quepem, acquitted the Respondents on grounds (1) that the evidence of P.W.1, Rama Gaonkar, P.W.3, Trupti Velip and P.W.5, Sharmila Naik was not consistent and suffered from discrepancies on vital aspects of the prosecution case. (2) The evidence of P.W.3, Trupti Velip and P.W.5, Sharmila Naik was doubted on the ground that they being teenaged girls would not have intervened in a quarrel between "robust" males and P.W.3, Trupti Velip, was the wife of P.W.4, Raju Devidas and as such, an interested witness. (3) That no independent witnesses namely the other passengers from the bus were examined by the prosecution.

4. The learned Judicial Magistrate First Class, Quepem, therefore, came to the conclusion that the prosecution "has miserably" failed to prove the guilt of the Accused and acquitted the Accused accordingly. Hence, the Appeal.

5. In order to appreciate the evidence, a reference has to be made to the evidence of P.W.1, Rama Gaonkar, who apart from being the first informant is the injured witness. P.W.1, Rama Gaonkar, states that he knows all the Accused. On the day of the incident, he was driving a mini bus bearing No.GA-02-T-4365. At about 4.25 p.m., the said bus started from Sanvordem to Kazur and the bus reached Bansai at about 4.30 p.m. P.W.4, Raju Devidas, was a conductor on the said bus. On reaching Bansai, Accused Nos.1 and 2 gave a signal to stop the bus and also came in front of the bus and, therefore, he stopped the bus. Thereafter, Accused No.1 brought a big stone and placed it in front of the right side tyre. Accused Nos.1 and 2 then came near the driver's door and after opening the said door they attempted to pull him out of the bus. However, as he clutched the steering wheel the Accused were not successful in their attempt. The Accused Nos.1 and 2 then boarded the bus from the door on the side which is generally used by the

passengers and after opening the inner door came inside the cabin and started assaulting him with fist blows, slaps and kicks. P.W.3, Trupti Velip P.W.5, Sharmila Naik and one more passenger attempted to intervene and requested the assailants not to assault P.W.1, Rama Gaonkar. However, Accused Nos.1 and 2 pushed them on their seats. Thereafter, the Accused left the scene. P.W.1, Rama Gaonkar, further states that Accused Nos.1 and 2 also broke the front glass of the mini bus causing damage of Rs.1000/-. His shirt was also torn. He further states that before commencing his journey, P.W.2, Ancet Fernandes and P.W.7, Anil Naik were discussing about certain "arrangements" made to assault P.W.1, Rama Gaonkar. He has identified the shirt which was torn and he has also identified M.O.2 as the stone which was placed in front of the tyre. Further, he states that Accused Nos. 1 and 2 also gave threats of bad consequences of killing. In the cross-examination, an omission has been brought out in respect of the route which the bus had taken from Kazur-Sanvordem, Pirla and Quepem and back to Sanvordem. It is also admitted that P.W.2, Ancet Fernandes and P.W.7, Anil Naik had told him that there was a conspiracy in order to assault him on the way. They had, however, not disclosed the names of the said persons. It is also admitted that no one was sitting in the cabin.

He has denied the suggestion that P.W.3, Trupti Velip and P.W.5, Sharmila Naik, were sitting in the cabin from Sanvordem itself. He has also admitted that P.W.4, Raju Devidas, conductor, was unmarried at the time of the incident and subsequently he has married P.W.3, Trupti Velip. It is further admitted in the cross-examination that he knew Accused Nos.1 and 2 since the time of the incident. However, he was knowing Accused Nos.1 and 2 by face prior to the incident and had disclosed the name of Accused No.1 in his complaint at Exh.PW1/A and did not disclose the name of Accused No.2. He denied the suggestion as false that Accused Nos.1 and 2 did not stop the bus forcibly by placing a big stone in front of the tyre. It is further admitted in the cross-examination "I say that after putting the stone one of the Accused tried to open the door which is of the driver's side as it was locked from inside, though they came from the cabin door". He has also denied the suggestion that the Accused Nos.1 and 2 did not attempt to drag him out of the bus. He has admitted that the Accused pushed P.W.3, Trupti Velip and P.W.5, Sharmila Naik on a portion of the tool box in the cabin. He has also admitted that P.W.4, Raju Devidas, on seeing the incident went to the Police Station to lodge the complaint. He has further admitted in his examination-in-chief that there was

some dispute between Accused No.3 on account of clash of timings of their bus.

6. The evidence of P.W.1, Rama Gaonkar, is corroborated by his complaint at Exh.PW1/A. P.W.6, Mohan M.Fal Dessai, a panch to the spot panchanama at Exh.PW6/A states that they found a shirt of khaki colour and had found glass pieces in the bus as well as on the road. He has stated that he knew Accused No.3 since last two years. He also stated that he does not remember whether a stone was attached. He has not identified the stone as the same stone which was attached. The scene of offence panchanama evidences the front wind shield of the bus being broken and the estimated loss being Rs.10,000/-. The said panchanama also evidences the attachment of the shirt and stone which has been placed in front of the tyre.

7. The prosecution in order to corroborate the evidence of P.W.1, Rama Gaonkar, examined P.W.3, Trupti Velip. She states that she boarded the bus being driven by P.W.1, Rama Gaonkar. She was travelling along with her friend P.W.5, Sharmila Naik and was sitting on a seat in front of the door after the driver's seat. She states that the bus was stopped by Accused Nos.1 and 2 whom she identified as

the Accused in the Court. She states that the Accused tried to drag Accused No.1. However, P.W.1, Rama Gaonkar, held on to the steering wheel thus failing to remove the same. She further states that both the Accused thereafter entered the bus from the door and thence in the cabin from the inner door. After entering the cabin, the Accused started assaulting P.W.1, Rama Gaonkar by fist blows. She states thereafter she along with the other passenger alighted from the bus. In the cross-examination, she has admitted that she knew Accused Nos.1 and 2 since the date of the incident and was not knowing them prior to it. She has stated that she could not recollect what type of clothes the Accused were wearing on that day. She further states that she saw the Accused only after the bus was stopped. She states that P.W.4, Raju Devidas, who was the conductor was standing at the door when the Accused entered the bus. She states that she did not notice if P.W.4, Raju Devidas, obstructed the Accused from entering the bus. She stated that there were many passengers in the bus and some were standing. She states that she was sitting near the window on the right hand side while P.W.5, Sharmila Naik, was sitting next to her. She has stated as correct that as some passengers were standing near their seat, she was not able to see the door of the bus which is on

the left hand side. However, since there were grills to the cabin the inside of the cabin was visible. She has denied the suggestion that it was possible to see inside the cabin. She has further admitted in the cross-examination "I saw the Accused persons when they entered the bus from the door on the left hand side. She has further stated that when the Accused tried to drag the Complainant from the driver's side, she was unable to see their faces. She has stated that only one Accused attempted to drag P.W.1, Rama Gaonkar but she could not state which Accused had done so. She has also stated that the Accused were not shown to her from the incident till her deposition. She has denied the suggestion as false that the Accused did not enter into the bus and caused injuries to P.W.1, Rama Gaonkar.

8. P.W.5, Sharmila Naik, a companion of P.W.3, Trupti Velip, states that on the day of the incident, she was sitting in the second row of the bus along with P.W.3, Trupti Velip. When the bus reached near Bansai, Accused Nos.1 and 2 came there and one of them stopped the bus and the other placed a big stone in front of the driver's side tyre. She further states that one of the Accused entered the driver's cabin through the door of the cleaner's side and the other one from the door of the driver's side.

According to her, Accused No.2 entered the bus from the door of the cleaner's side and started assaulting the driver by kicks and fist blows. Accused No.1 also assaulted the driver. Thereafter, she has not seen anything. She along with P.W.3, Trupti Velip tried to separate the Accused in their attempt to assault P.W.1, Rama Gaonkar but they were pushed by the Accused persons. In the cross-examination, she has admitted that P.W.3, Trupti Velip, is her neighbour. She has denied the suggestion that they were regularly travelling in the bus. She has denied that she is married to P.W.4, Raju Devidas. She has also admitted that she knows the Accused since the date of the incident and was not knowing them earlier. She has admitted that P.W.3, Trupti Velip, was not present at the scene of the offence. She has admitted that the bus was "full" of passengers and some persons were standing. She has also admitted that none from the passengers attempted to intervene and separate except P.W.3, Trupti Velip and herself. She states that she had gone to the Police Station on the same day along with the Accused.

9. P.W.4, Raju Devidas, the conductor on the bus, states that on the day of the incident as the bus reached Bansai, Accused Nos.1 and 2 placed one big stone in front of the front tyre on the driver's

side after stopping the bus. One of the Accused started pulling the driver out of the driver's seat. One of the Accused came in the cabin on the driver's side and the other Accused from the cleaner's side and started assaulting P.W.1, Rama Gaonkar and also giving him kicks. On seeing this, he started running away towards the bus stand at Curchorem and informed the owner of the bus on telephone. In the cross-examination, he has stated that he came to know Accused Nos.1 and 2 only on the date of the incident. He was unable to state which of the Accused placed the stone and which of the Accused dragged P.W.1, Rama Gaonkar. He states that he was on the left side door of the bus. It was suggested to him that as he was standing on the left side door the front tyre of the driver's side was not visible. He has stated that he was standing in such a position that the front side was visible. He further states that the names of the Accused were disclosed by someone subsequently. He has stated that Accused No.2 is also having a bus which is plying on the same route and there was a dispute regarding the timings of the buses. He has denied the suggestion that the Accused did not place a stone and stopped the bus. He also denied the suggestion that the Accused did not cause injuries. The learned Trial Court while acquitting the Respondents/Accused has disbelieved P.W.1, Rama

Gaonkar, on the ground that P.W.1, Rama Gaonkar, had stated that while reaching Bansai, Accused Nos.1 and 2 gave a signal to stop the bus and also came in front of the bus and hence, he stopped the bus. According to the learned Trial Judge, P.W.1, Rama Gaonkar, contradicts what P.W.4, Raju Devidas, the conductor had stated. The learned Trial Judge in paragraph 8 of the Judgment while disbelieving P.W.1, Rama Gaonkar, has contrasted the evidence of P.W.1 Rama Gaonkar, as against the testimony of P.W.4, Raju Devidas. P.W.1, Rama Gaonkar, has stated that the bus was stopped by Accused Nos.1 and 2 by giving a signal and coming in front of the bus and thereafter Accused No.1 had placed a stone in front of the right side tyre of the bus. According to P.W.4, Raju Devidas, both the Accused had placed a stone in front of the tyre on the driver's side after stopping the bus. Therefore, according to the learned Trial Court, the evidence of P.W.1, Rama Gaonkar, is not corroborated by the evidence of P.W.4, Raju Devidas and the discrepancy which the learned Trial Court notices is about P.W.1, Rama Gaonkar stating that the stone was placed by one Accused while P.W.4, Raju Devidas, states that the stone was placed by both the Accused.

10. The learned Trial Judge has in the same

paragraph disbelieved P.W.5, Sharmila Naik, on the ground that she has not identified which of the Accused allegedly placed the stone. In respect of P.W.3, Trupti Velip, the learned Trial Judge has disbelieved her as she had not stated about placing of a stone by either of the Accused. In fact, the learned Trial Judge went on to observe that it was beyond this comprehension as to how P.W.3, Trupti Velip, had seen the Accused placing the stone in front of the driver's side tyre of the bus if she was sitting in the second row behind the driver's seat. The learned Trial Judge, therefore, acquitted the Accused in respect of offence punishable under Section 341 r/w 109 and 34 of the Indian Penal Code.

11. In respect of the charge for causing injuries, the learned Judge rejected the evidence of P.W.3, Trupti Velip and P.W.5, Sharmila Naik on the ground that it was unbelievable that when such "a terrible incident between the "robust" males is taking place the same would be allegedly intervened by two tiny girls". He also held that P.W.5, Sharmila Naik, who admittedly was married to P.W.4, Raju Devidas, after the incident, was an interested witness. The learned Judge disbelieved the evidence of P.W.1, Rama Gaonkar, further as P.W.2, Ancet Fernandes and P.W.4, Raju Devidas, did not

corroborate him in respect of the information regarding conspiracy to assault him on the way. The learned Trial Judge then disbelieved P.W.4, Raju Devidas, on the ground that he had stated that one person had boarded the bus from the driver's side while the other had boarded the bus from the cleaner's side and such was contradicted to what was deposed by P.W.1, Rama Gaonkar and P.W.3, Trupti Velip, who stated that both the Accused boarded the bus from the cleaner's side. P.W.5, Sharmila Naik, had also deposed in the same way as P.W.4, Raju Devidas, which according to the learned Trial Judge was not consistent with the deposition of P.W.1, Rama Gaonkar. The learned Judge further remarked upon the fact that though the bus was full of passengers, none of them tried to separate or intervene P.W.3, Trupti Velip and P.W.5, Sharmila Naik. The learned Trial Judge found that the prosecution had not examined independent witnesses and thus, adverse inference was drawn against the Accused for not drawing independent witnesses. The learned Trial Judge also found that P.W.2, Ancet Fernandes and P.W.7, Anil Naik did not corroborate the version of P.W.1, Rama Gaonkar, but only stated that they were present at the Curchorem bus stand sitting in the bus "Kalpita" and someone was talking regarding the possibility of the assault. In that background, therefore, the learned Trial

Judge acquitted the Respondents/Accused.

12. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State has urged before me that the approach of the learned Trial Court acquitting the Respondents/Accused is completely perverse. According to the learned Public Prosecutor appearing on behalf of the State, P.W.1, Rama Gaonkar, an injured witness stands fully corroborated by the recitals of the F.I.R. at Exh.PW1/A and the scene of offence panchanama at Exh.PW6/A. Merely because of slight discrepancies in the evidence of the other witnesses, it is not a ground to jettison the otherwise reliable testimony. He further submits that the so-called variance in the evidence is not on any material or vital aspect of the prosecution case but is only on the peripheral aspect of the Accused entering the bus. There is no cross-examination to disbelieve the claim of the witnesses that they had seen Accused Nos.1 and 2 entering the bus and assaulting P.W.1, Rama Gaonkar.

13. Mr. Edwin Furtado, learned Counsel appearing on behalf of the Respondents/Accused has supported the Judgment of the learned Trial Court and has vehemently argued that the contradiction or the variance noted by the learned Trial Court are on

material aspects of the prosecution case. According to him, there is no corroboration worth the name to the solitary testimony of P.W.1, Rama Gaonkar and, therefore, according to him, the learned Trial Court was perfectly justified in acquitting the Respondents/Accused. It is further stated that this is an Appeal against acquittal and the view taken by the learned Trial Court is a possible view to be taken on the basis of the evidence on record and this Court should not interfere merely because another view was possible.

14. In an Appeal against acquittal, the appellate Court has the power to re-appreciate the evidence and the appellate Court would not interfere with the acquittal merely because a second view was possible. The appellate Court can interfere with the acquittal of the Accused if the view taken by the learned Trial Court is a perverse view which is not warranted on the basis of the evidence on record.

15. The Apex Court in **Sucha Singh and another v. State of Punjab** reported in 2003(6) Scale page 34 has held that the principle of "falsus in uno falsus in omnibus"(false in one thing, false in everything) cannot be applied to jettison the prosecution case. The Apex Court further observed that it was the duty

of the Court to separate grain from chaff and when chaff can be separated from grain it will be open to the Court to convict an Accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other Accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end.

16. In the present case, P.W.1, Rama Gaonkar, is admittedly an injured witness. The evidence of P.W.1, Rama Gaonkar, is corroborated by the F.I.R., the damage sustained to the bus and is evident in the panchanama at Exh.PW6/A and the medical evidence which shows that P.W.1, Rama Gaonkar, had sustained injuries. The fanatical adherence for insisting corroboration to the testimony of an injured witness adds insult to injury. A conviction can still be based on a testimony of injured witness provided the testimony is of sterling quality and if that be so, there cannot be any legal infirmity in sustaining a conviction. The insistence that the testimony of such witness should be corroborated by other independent witnesses and if such corroboration in material particulars is not available to acquit the Accused is an unrealistic approach. Different eye witnesses to an incident should act differently and the perception of an incident, its recapitulation in

Court particularly after passage of time defers from individual to individual. To expect and insist for an exact replica of the evidence of one eye witness to the other is not only alien to law but is extremely harsh. No two eye witnesses can ever be expected to depose alike. There are bound to be minor variations either knowingly or unknowingly due to lapse of memory. Minor variations do not affect the core of the evidence of the witness and cannot be made the foundation for jettisoning the evidence of the other reliable witnesses. The insistence on corroboration with mathematical accuracy is neither a rule of law nor of prudence. The insistence of the learned Trial Court in seeking corroboration of P.W.1, Rama Gaonkar, is wholly unwarranted. The learned Trial Court has rejected the otherwise evidence of P.W.1, Rama Gaonkar, because there were slight variations in the testimony of the other witnesses. Such an approach according to me, is wholly perverse. The prosecution had examined P.W.3, Trupti Velip, P.W.4, Raju Devidas and P.W.5, Sharmila Naik and out of these, P.W.3, Trupti Velip and P.W.5, Sharmila Naik were independent witnesses and, therefore, an adverse inference against the prosecution ought not to have been drawn for its failure to examine the other passengers in the bus. P.W.5, Sharmila Naik, cannot be termed as an interested witness merely

because she married P.W.4, Raju Devidas, after the incident. There is nothing intrinsic in the evidence of P.W.1, Rama Gaonkar, to disbelieve what he states. At the close of the cross-examination. P.W.1, Rama Gaonkar, emerges as a truthful witness and, therefore, according to me, despite minor variations in the evidence of other witnesses, a conviction can be based on the testimony of P.W.1, Rama Gaonkar.

17. The Accused Nos.1 and 2 had stopped the bus and had placed a stone in front of the tyre of the bus thus wrongfully restraining P.W.1, Rama Gaonkar and the other passengers from proceeding further. The Accused Nos.1 and 2 are, therefore, guilty of the offence punishable under Section 341 of the Indian Penal Code. As far as Section 506(ii) of the Indian Penal Code, though, P.W.1, Rama Gaonkar, has vaguely stated about the Accused Nos.1 and 2 giving him threats, the exact words have not been stated by him. In that background, therefore, according to me, an offence under Section 506(ii) is not made out against the Respondents/Accused. P.W.1, Rama Gaonkar, has clearly stated about the breakage of the wind screen and this is evident in the panchanama at Exh.PW6/A. The Accused Nos.1 and 2, therefore, are guilty of offence punishable under Section 427 of the Indian

Penal Code. Since both the Accused had jointly stopped the bus and had boarded the bus and had assaulted P.W.1, Rama Gaonkar, the Accused Nos.1 and 2 are guilty for an offence punishable under Section 323 of the Indian Penal Code. Both the Accused had jointly stopped the bus and, therefore, the evidence strongly suggests that the offence was committed by the Accused in furtherance of their common intention. I, therefore, find that Accused Nos.1 and 2 are guilty for an offence punishable under Sections 341, 427, 323 r/w 34 of the Indian Penal Code. Accused Nos.1 and 2 are acquitted for an offence punishable under Section 506(ii) of the Indian Penal Code. In respect of Accused No.3, the learned Public Prosecutor has very fairly considered that there is no evidence whatsoever that Accused No.3 was present at the scene of offence and infact, witnesses have admitted that Accused No.3 was not present. No offence as such is made out against Accused No.3 and Accused No.3 is entitled to be acquitted and as such is acquitted for the offences with which he was charged.

18. Accused Nos.1 and 2/Respondent Nos. 1 and 2 are not present in the Court and, therefore, this Judgment is stopped at this stage to hear the Accused

Nos.1 and 2/Respondent Nos.1 and 2 on the point of sentence.

19. S. O. - 16th January, 2004.

P. V. HARDAS, J.

DATE : 22ND JANUARY, 2004.

20. The Respondent Nos.1 and 2 are present in Court in pursuance to the directions issued by the Court. They state that they do not wish to address the Court on the point of sentence and whatever is stated is through their Counsel.

21. Mr. Edwin Furtado, learned Counsel appearing on behalf of the Respondents/Accused has stated that the Respondents/Accused are young persons and at present, have no fix source of livelihood. The Respondents/Accused have not been convicted for any offence and their antecedents are clean. From the evidence on record, there appears to be an enemical animosity existing between P.W.1, Rama Gaonkar and the Accused on the point of timings of the various buses. It is also submitted that apparently from the record,

it appears that the offence occurred on account of some misunderstanding and possibly heated discussion. The offence was not committed in a premeditated manner. It is, therefore, urged that this Court taking into consideration the age of the Respondents/Accused should take a lenient view of the sentence to be imposed.

22. After taking into consideration the submission of the learned Counsel appearing on behalf of the Respondents/Accused, the following sentence is passed.

Respondent Nos.1 and 2 are each sentenced till rising of the Court and to pay fine of Rs.400/- for an offence punishable under Section 341 of the Indian Penal Code; Respondent Nos.1 and 2 are sentenced till rising of the Court and to pay fine of Rs.1000/- for an offence punishable under Section 427 of the Indian Penal Code; Respondent Nos.1 and 2 are sentenced to imprisonment till rising of the Court and to pay fine of Rs.1000/- each for an offence punishable under Section 323 of the Indian Penal Code. The sentence of imprisonment till rising of the Court would obviously be concurrent. Fine, if recovered, be paid to P.W.1, Rama Gaonkar, as compensation under Section 357. Three weeks time is granted to Respondent Nos.1 and 2 for payment of fine.

23. Criminal Appeal No.37 of 2003 is accordingly partly allowed. Respondent Nos.1 and 2 are sentenced as aforestated and the Appeal against Respondent No.3 is dismissed.

P. V. HARDAS, J.

RD.